



## **Fiscal Service**

### **31 CFR Part 208**

**[FISCAL-2022-0003]**

**RIN 1530-AA27**

#### **Management of Federal Agency Disbursements**

**AGENCY:** Bureau of the Fiscal Service, Treasury.

**ACTION:** Notice of proposed rulemaking with request for comment.

**SUMMARY:** The Department of the Treasury’s (Treasury) Bureau of the Fiscal Service (“Fiscal Service” or “we”), is proposing to amend its regulation that implements a statutory mandate requiring the Federal Government to deliver non-tax payments by electronic funds transfer (EFT) unless a waiver is available. Among other things, this Notice of Proposed Rulemaking (NPRM) would strengthen the EFT requirement by narrowing the scope of existing waivers from the EFT mandate or requiring agencies to obtain Fiscal Service’s approval to invoke certain existing waivers; provide that Treasury has the right to nullify an agency’s use of a waiver if Treasury determines that application of a waiver would lead to an agency initiating an unusually large number or proportion of payments by means other than EFT; and clarify that when an agency fails to make a payment by EFT as prescribed by part 208, Treasury has authority to assess a charge to an agency. The proposed changes reflect the reality that the use of electronic payments has expanded significantly since the waivers from the EFT mandate were first published in 1998 and also seek to take advantage of Treasury’s growing profile of electronic payment options, which are faster, less expensive, and safer than paper checks. Strengthening the EFT requirements as proposed in the NPRM is also consistent with Treasury’s commitment to reducing check payments.

**DATES:** To be considered, comments on the proposed rule must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Commenters are encouraged to submit comments on the proposed rule, identified by Docket No. FISCAL-2022-0003, electronically through the Federal eRulemaking Portal at [regulations.gov](https://www.regulations.gov) by following the online instructions for submitting comments. Comments on the proposed rule may also be mailed to the Department of the Treasury, Bureau of the Fiscal Service, Attn: Matthew Helfrich, Management and Program Analyst, Payment Strategy and Innovation Division, 3201 Pennsy Drive, Bldg E, Landover, MD 20785.. Comments on the proposed rule may also be mailed to the Department of the Treasury, Bureau of the Fiscal Service, Attn: Matthew Helfrich, Management and Program Analyst, Payment Strategy and Innovation Division, 3201 Pennsy Drive, Bldg E, Landover, MD 20785.

All submissions received must include the agency name (Bureau of the Fiscal Service) and docket number for this rulemaking (FISCAL-2022-0003). In general, comments received will be published on [Regulations.gov](https://www.regulations.gov) without change, including any business or personal information provided. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not disclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You can download the proposed rule at the following website: [fiscal.treasury.gov/eft/laws-regulations.html](https://fiscal.treasury.gov/eft/laws-regulations.html). You may also inspect and copy the proposed rule at: Treasury Department Library, Freedom of Information Act (FOIA) Collection, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW, Washington, DC 20220. Before visiting, you must call (202) 622-0990 for an appointment.

**FOR FURTHER INFORMATION CONTACT:** Matthew Helfrich, Management and Program Analyst, at (215) 806-9616 or [Matthew.Helfrich@fiscal.treasury.gov](mailto:Matthew.Helfrich@fiscal.treasury.gov), or Rebecca Saltiel, Senior Counsel, at (202) 874-6648 or [Rebecca.Saltiel@fiscal.treasury.gov](mailto:Rebecca.Saltiel@fiscal.treasury.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In 1998, Fiscal Service issued a final rule on part 208 of title 31, Code of Federal Regulations (part 208), to implement the requirements of section 3332 of title 31 of the United States Code, as amended by section 31001(x)(1) of the Debt Collection Improvement Act of 1996, Pub. L. 104-134, 110 Stat. 1321-376 (section 3332). Section 3332 generally mandates that all Federal payments that the Government makes, other than tax payments, be delivered by EFT unless waived by the Secretary of the Treasury.

The waivers authorized by section 3332 are located exclusively in part 208. Specifically, subsection (f)(2)(A) of section 3332 provides that “[t]he Secretary of the Treasury may waive application of [the EFT mandate] to payments – (i) for individuals or classes of individuals for whom compliance poses a hardship; (ii) for classifications or types of checks; or (iii) in other circumstances as may be necessary.” 31 U.S.C. 3332(f)(2)(A). Subsection (f)(2)(B) states that “[t]he Secretary of the Treasury shall make determinations under subparagraph (A) based on standards developed by the Secretary.” 31 U.S.C. 3332(f)(2)(B). 31 U.S.C. 3332 also, more generally, authorizes the Secretary of the Treasury to “prescribe regulations that the Secretary considers necessary to carry out this section.” 31 U.S.C. 3332(i)(1).

Pursuant to statutory authority in 31 U.S.C. 3335, part 208 also provides that Treasury may assess a charge to an agency that fails to make a payment by EFT as prescribed by part 208.

The part 208 waivers have remained largely unchanged since the late 1990s even as Treasury's percentage of payments made electronically has significantly increased. In 2007, 78% of the Government's payments that Treasury disbursed were made electronically. By 2021, that figure had risen to over 96%. Of the 1.4 billion payments that Treasury typically disburses each year on behalf of Federal agencies, all but about 50 million are paid electronically.

The part 208 waivers have also remained largely unchanged despite Treasury expanding its electronic payment offerings. The additional offerings include same-day Automated Clearing House (ACH) payments; ACH payments with addenda information; Treasury-sponsored debit cards; commercial prepaid cards; and emerging payments using digital wallets, including the Treasury-sponsored Digital Pay program. Treasury also operates electronic payment support and education programs and platforms such as GoDirect.gov and the Direct Express Financial Education Center. None of these offerings existed when Treasury published its final rule on part 208 in 1998, including its waiver provisions.

The use of Treasury-sponsored debit cards illustrates how much has changed since the waivers were first published. Over 3.6 million Federal benefit payees receive their payments on Direct Express debit cards, which are linked to accounts sponsored by Treasury. Similarly, over 16.5 million Economic Impact Payment (EIP) payees received payments in 2020 and 2021 on EIP Cards, which are debit cards linked to Treasury-sponsored accounts. The Direct Express program helps ensure that recipients of Federal benefits receive payments electronically even if they do not have bank accounts. The use of EIP Cards helped Treasury meet its responsibility to issue EIPs as quickly as possible. But for the issuance of debit cards, most of these payments would have been by paper check.

It is Treasury's goal to create a modern, seamless, and cost-effective Federal payment experience for the public. Expanding the use of electronic payments and reducing the number of paper checks are essential to this goal. Electronic payments are much faster and significantly less expensive than paper checks. Electronic payments are safer than paper checks as well, with direct deposits being 16 times less likely to have post-payment issues (such as claims of missing or misdelivered payments) than paper checks. Electronic payments avoid the disproportionate burden checks can place on some payment recipients—who may have to resort to expensive check cashing services—as well as the negative impact that check production and delivery may have on the environment.

There remains room for improvement in increasing the percentage of payments made electronically and reducing the number of paper checks produced and mailed out every year. Treasury works closely with Federal agencies that make payments and has encountered numerous examples of payments that are made by paper check that ought to be made electronically. These often include Federal intragovernmental payments and vendor payments, many of which take place on a recurring basis. Increasing the electronic payment rate for Treasury-disbursed payments is part of an Agency Priority Goal for Treasury, and Treasury has set an objective that by the end of the decade 99% of all Government payments it disburses for agencies will be paid electronically.

Treasury believes that it is time to narrow the existing waivers. A narrowing of the waivers should increase the percentage of payments made electronically and reduce the number of paper checks sent out each year. This narrowing is possible and appropriate because of the changes over the last 20 years that have increased the percentage of electronic payments and the number of electronic payment options.

## **II. Proposed Change to Regulation**

## *Summary of Proposal*

The proposed rule affects the EFT waivers in § 208.4 that have been largely unchanged since the late 1990s. We propose amending several existing waivers to either narrow their scope or to require the agency seeking to use the waiver to first file a request with Treasury. The rule changes are consistent with, and facilitated by, a substantial increase in the percentage of electronic payments and in the number of electronic payment options since many of these waivers were first published.

We also propose to add a new paragraph (c) to § 208.4 that would give Treasury the ability to nullify an agency waiver if Treasury makes the determination that the application of the waiver would lead to an agency initiating an unusually large number or proportion of payments by means other than EFT.

In addition, we propose amending § 208.9(b) to clarify that when an agency fails to make a payment by EFT as prescribed by part 208, Treasury will consider that payment to not be a timely payment under 31 U.S.C. 3335, as EFT payments are processed, disbursed, and settled more quickly than paper checks. We would retain the existing language in § 208.9(b) authorizing Treasury to assess a charge to an agency that fails to make a payment by EFT as prescribed under this part.

Treasury is requesting comment on all proposed amendments to this part including views on whether the amendments are appropriate and well-tailored to increase the delivery of secure and accurate electronic payments at reduced operational costs while also improving climate sustainability and expanding financial inclusion.

### **III. Section-by-Section Analysis**

#### **§ 208.1**

We are not proposing any changes to § 208.1.

#### **§ 208.2**

We are not proposing any changes to § 208.2.

#### § 208.3

We are not proposing any changes to § 208.3.

#### § 208.4

We propose to amend § 208.4 in several ways.

We propose to amend the waiver at paragraph (a)(1)(ii), which exists for payment types for which Treasury does not offer delivery to a Treasury-sponsored account. The amendment would specify that if Treasury provides an agency with an option to begin delivering a type of payment to a Treasury-sponsored account, the agency must file a waiver request with Treasury before making payments other than by EFT. The waiver request process ensures that Treasury, not the agency, will determine whether Treasury can offer payment delivery to a Treasury-sponsored account. Filing the waiver request is sufficient to utilize the waiver pending Treasury's decision on the request, but if Treasury ultimately rejects the request, the waiver will cease for payments to be made after the decision date.

We propose to add a new waiver to § 208.4 that would be numbered as a new paragraph (a)(3). This waiver would provide that payment by EFT is not required when the payment is to be made in a foreign currency and Treasury does not support electronic payment in that foreign currency. Treasury currently supports electronic payments in 145 foreign currencies to over 200 countries and territories, but we acknowledge that Treasury payment systems do not support electronic payment in every foreign currency. The proposed new waiver would apply in these limited circumstances.

We propose to amend the existing waiver at paragraph (a)(3) (proposed to be renumbered as paragraph (a)(4)), which waives the EFT requirement for payments to recipients in a designated disaster area within 120 days after the disaster is declared. The amendment would allow an agency to extend this waiver beyond 120 days after the

disaster is declared, provided that the agency files a waiver request with Treasury using a procedure set forth in paragraph (b). Filing is sufficient to extend the waiver pending Treasury's decision on the request, but if Treasury ultimately rejects the request the waiver will cease for payments to be made after the decision date. We propose this change in response to feedback we have received from an agency regarding their disaster relief payments and the potential need to extend the waiver beyond the initial 120-day timeframe. However, agencies contemplating using this waiver should be mindful that U.S. Debit Cards and Direct Express cards are electronic payment options that Treasury can make available to recipients in designated disaster areas, negating the need for an EFT waiver and paper checks in many instances.

We propose to amend the waiver at paragraph (a)(6) (but would now be renumbered as paragraph (a)(7)), which applies when an agency does not expect to make payments to the same recipient within a one-year period on a regular, recurring basis, and remittance data explaining the purpose of the payment is not readily available from the recipient's financial institution receiving the payment by EFT. We plan to eliminate the language concerning the remittance data explaining the purpose of the payment. This language is archaic and no longer necessary or pertinent. Treasury disburses Federal payments to recipients' financial institution accounts with information that the financial institutions make available to recipients, allowing recipients to determine the purpose of the payments. This information often exceeds the information available on a Treasury check.

We also plan to amend the remaining language in the waiver at paragraph (a)(6) (proposed to be renumbered as paragraph (a)(7)) to narrow its scope so that it will only apply when an agency does not expect to make payments to the same recipient within a one-year period on a regular, recurring basis and that recipient is an individual or a small business concern. We propose to adopt the meaning given to the term "small business



concern” in section 3 of the Small Business Act at 15 U.S.C. 632. A broad waiver that would apply when an agency does not expect to make payments to the same recipient within a one-year period on a regular, recurring basis, regardless of the identity of the recipient, is no longer necessary, given the variety of electronic payment options available to agencies and payment recipients, including vendors. Nevertheless, we propose to retain this waiver for agency payments to small business concerns to aid Federal agencies in their efforts to reach the broadest and most inclusive and diverse audience for Federal agency contracting opportunities. We also propose to retain this waiver for agency payments to individuals because we recognize that there are limited situations in which it might still make sense for an agency to make a one-time, non-recurring payment to an individual by paper check.

During Treasury’s ongoing interactions with agencies regarding our efforts to increase electronic payments, we have become aware that some agencies are mistakenly relying on the one-time, non-recurring payment waiver (currently at § 208.4(a)(6)) to make the first in a series of recurring benefit payments to a recipient by paper check. Part 208 does not, as currently written, provide agencies with a waiver for the initial payment in a series of recurring payments. We understand that certain benefit paying agencies have encountered process and systems-related impediments that make it difficult for them to make the initial payment in a series of recurring benefit payments by EFT.

We do not propose adding a permanent waiver for this category of initial, recurring payments, but pursuant to § 208.10 Treasury reserves the right to waive any provisions of part 208 in any class of cases. In response to the feedback we have received from benefit paying agencies regarding systems impediments to making the initial payment in a series of recurring payments by EFT, and using the discretion provided in § 208.10, we will waive application of the EFT mandate for agencies making initial payments in a series of recurring payments for two years from the date of

publication of the final rule amending part 208. This will permit affected agencies to make initial payments by paper check while giving agencies the time they need to make any required system or process changes that will allow them to fully comply with the part 208 EFT mandate.

We propose to amend the existing waiver that is at paragraph (a)(7) (proposed to be renumbered as paragraph (a)(8)), which applies to payments where: (1) an agency's need for goods and services is urgent or where there is only one source for goods or services and (2) the Government would be significantly impacted unless payment is made by means other than EFT. We would retain this waiver but require an agency to file a waiver request with Treasury to invoke it. The subject matter of this waiver is extremely fact specific, so we believe that it is appropriate for Treasury to consider waiver requests under the new (a)(8) on a case-by-case basis. Filing the waiver request is sufficient to utilize the waiver pending Treasury's decision on the request, but if Treasury ultimately rejects the request, the waiver will cease for payments to be made after the decision date.

We propose to amend paragraph (b), which describes the waiver request process. We would amend it so that it extends to requests for waivers from agencies as well as individuals. Agencies do not submit waiver requests today but pursuant to today's proposed rule would do so in some cases as described above. Agencies seeking waivers would be able to find more detailed information about how to file a waiver request from Treasury in the Treasury Financial Manual at [fiscal.treasury.gov/tfm](https://fiscal.treasury.gov/tfm). Agencies would be entitled to make payment by paper check during the pendency of the waiver request process so that no payments would be delayed by the new waiver request requirement. Individuals seeking waivers can find more detailed information about how to file a waiver request with Treasury at [godirect.gov](https://godirect.gov). Treasury reserves the right to reject any waiver request it receives.

We propose to add a new paragraph (c) that would give Treasury the ability to nullify an agency's waiver if Treasury makes the determination that the application of the waiver would lead to the agency initiating an unusually large number or proportion of payments by means other than EFT. If Treasury nullified a waiver for a class of cases in accordance with this new paragraph (c), Treasury would require the agency in question to work with Treasury to identify and implement ways to make the payments by EFT. Among other things, this may include requiring an agency to work with Treasury to identify information to make payments by EFT by using data that Treasury maintains on previous payments to the same payment recipient.

The remaining provisions in § 208.4 are unchanged.

#### § 208.5

We are not proposing any changes to § 208.5.

#### § 208.6

We are not proposing any changes to § 208.6.

#### § 208.7

We propose to amend § 208.7 to add a new requirement that an agency shall provide to Treasury, upon request from Treasury, the employer identification numbers (EINs) assigned to the agency that the agency has used when making or receiving Federal intragovernmental payments within the 12 months preceding the request as well as the EINs for all Federal agencies to whom the agency has made a Federal intragovernmental payment in the preceding 12 months. This agency EIN data would be valuable because it would enable Treasury to identify Federal intragovernmental payments more easily. We propose to add this requirement as a subparagraph (b) and label the existing language in 208.7 as subparagraph (a).

#### § 208.8

We are not proposing any changes to § 208.8.

## § 208.9

We propose to amend § 208.9(b) to clarify that when an agency fails to make a payment by EFT as prescribed by this part, Treasury will consider the payment to be untimely under 31 U.S.C. 3335, as EFT payments are processed, disbursed, and settled more quickly than checks. When an agency makes a paper check payment that falls into one of the waiver categories in § 208.4, Treasury will consider that payment to be a timely payment under 31 U.S.C. 3335 as an exceptional circumstance. We would retain the existing language in § 208.9(b) specifying that, pursuant to 31 U.S.C. 3335, Treasury may assess a charge to an agency that fails to make a payment by EFT as prescribed by part 208. Treasury would reserve the right to assess a charge to any agency that fails to make a payment by EFT after Treasury has rejected the agency's waiver request for that payment.

## § 208.10.

We are not proposing any changes to § 208.10.

## § 208.11

We are not proposing any changes to § 208.11.

## **IV. Procedural Analysis**

### Request for Comment on Plain Language

Executive Order 12866 requires each agency in the Executive branch to write regulations that are simple and easy to understand. We invite comment on how to make the proposed rule clearer. For example, you may wish to discuss: (1) whether we have organized the material to suit your needs; (2) whether the requirements of the rule are clear; or (3) whether there is something else we could do to make this rule easier to understand.

### Regulatory Planning and Review

The proposed rule does not meet the criteria for a “significant regulatory action” as defined in Executive Order 12866. Therefore, the regulatory review procedures contained therein do not apply.

### Regulatory Flexibility Act Analysis

It is hereby certified that the proposed rule will not have a significant economic impact on a substantial number of small entities. The rule provisions being amended primarily apply to Federal agencies and individuals who receive Federal payments, and do not have any direct impact on small entities.

### Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that the agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal Governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. We have determined that the proposed rule will not result in expenditures by State, local, and tribal Governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. Accordingly, we have not prepared a budgetary impact statement or specifically addressed any regulatory alternatives.

## **V. Proposed Regulations**

### **List of Subjects in 31 CFR Part 208**

Banks, banking, Debit cards, Disbursements, Electronic funds transfers, Federal payments, Treasury-sponsored accounts.

For the reasons set out in the preamble, we propose to amend 31 CFR part 208 as follows:

**Title 31: Money and Finance: Treasury**

**PART 208—MANAGEMENT OF FEDERAL AGENCY DISBURSEMENTS**

1. The authority citation for part 208 continues to read as follows:

**Authority:** 5 U.S.C. 301; 12 U.S.C. 90, 265, 266, 1767, 1789a; 31 U.S.C. 321, 3122, 3301, 3302, 3303, 3321, 3325, 3327, 3328, 3332, 3335, 3336, 6503.

\* \* \* \* \*

2. Amend § 208.4 by:

- a. Revising paragraph (a)(1)(ii);
- b. Adding a new paragraph (a)(3) and redesignating paragraphs (a)(3) through (a)(7) as paragraphs (a)(4) through (a)(8);
- c. Revising paragraphs (a)(4), (a)(7), and (a)(8);
- d. Revising paragraph (b); and
- e. Adding a new paragraph (c).

The revisions and additions read as follows:

**§ 208.4 Waivers.**

(a) \* \* \*

(ii) \* \* \* However, if Treasury provides an agency with an option to begin delivering a type of payment to a Treasury-sponsored

account, the agency must file a waiver request with Treasury to make payments of that type by any means other than by electronic funds transfer.

\* \* \* \* \*

(3) Where the payment is in a foreign currency and Treasury does not support electronic payment in that currency.

(4) \* \* \* An agency must file a waiver request with Treasury (which must be approved by Treasury) to extend this waiver beyond 120 days after the disaster is declared.

\* \* \* \*

(7) Where the agency does not expect to make multiple payments to the same recipient within a one-year period on a regular, recurring basis but only if the payments are made to an individual or a small business concern where “small business concern” has the meaning given the term in section 3 of the Small Business Act at 15 U.S.C. 632.

(8) \* \* \* An agency must file a waiver request with Treasury (which must be approved by Treasury) to utilize this waiver.

(b) An individual who requests a waiver under paragraphs (a)(1)(iv) and (v) or an agency who requests a waiver under paragraphs (a)(1)(ii), (a)(4), or (a)(8) of this section shall provide, in writing, to Treasury a certification supporting that request, in such form that Treasury may prescribe. The individual shall attest to the certification before a notary public, or otherwise file the certification in such form that Treasury may prescribe. Treasury reserves the right to reject any waiver request it receives.

(c) If application of an agency’s waiver, together with any waiver request previously granted under paragraphs (a)(1)(ii), (a)(4), or (a)(8), would, in Treasury’s

determination, lead to the agency initiating an unusually large number or proportion of payments by means other than electronic funds transfer, Treasury reserves the right to nullify the waiver in this class of cases and require the agency to work with Treasury to identify and implement ways to make the payments by electronic funds transfer.

\* \* \* \* \*

**3. Amend § 208.7 by:**

- a. Redesignating the existing language as paragraph (a); and**
- b. Adding a new paragraph (b).**

The revision and addition read as follows:

**§ 208.7 Agency responsibilities.**

(a) An agency shall put into place procedures that allow recipients to provide the information necessary for the delivery of payments to the recipient by electronic funds transfer to an account at the recipient's financial institution or a Treasury-sponsored account.

(b) Upon request from Treasury, an agency shall provide Treasury with a list of the employer identification numbers (EINs) assigned to the agency that the agency has used to make or receive a Federal intragovernmental payment during the 12- month period preceding the request from Treasury as well as a list of the EINs for all Federal agencies to whom the agency has made a Federal intragovernmental payment during the same 12- month period.

\* \* \* \* \*



4. Amend § 208.9 by revising paragraph (b) to read as follows:

**§ 208.9 Compliance.**

\* \* \* \* \*

(b) If an agency fails to make payment by electronic funds transfer as prescribed under this part, Treasury will consider that payment to be not timely pursuant to 31 U.S.C. 3335, as electronic funds transfer payments are processed, disbursed, and settled more quickly than checks and, accordingly, Treasury may assess a charge to the agency pursuant to 31 U.S.C. 3335.

**David Lebryk,**

*Fiscal Assistant Secretary.*

[FR Doc. 2022-28458 Filed: 1/9/2023 8:45 am; Publication Date: 1/10/2023]